

MEN AND BOOKS

The Caldwell - O'Sullivan Duel:

A Prelude to the Founding of The Montreal General Hospital

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ON April 11, 1819, Windmill Point, near Montreal, was the scene of one of the longest and fiercest duels ever fought in Canada. Both duellists were professional men practising in Montreal. The challenger was Mr. Michael O'Sullivan, an attorney-at-law. His opponent was Dr. William Caldwell, physician and surgeon. The literature contains many references to the duel and the controversy which preceded it.¹⁻¹³ Careful reading of these published accounts reveals discrepancies and even obvious errors which obscure the true sequence of events. Most medical writers convey the impression that Mr. O'Sullivan was an insignificant person whose chief claim to recognition was his duel with Dr. Caldwell; this is not in accord with the facts. The story of the controversy and the duel has therefore been reviewed, with special attention to contemporary reports in the newspapers of 1819¹⁴⁻¹⁹ and to biographical sketches of O'Sullivan^{2, 3, 6, 20-22} and Caldwell.^{4, 5, 9-11, 23-26}

Michael O'Sullivan (1784-1839) was born in Ireland and came to Canada at an early age. He was educated at the Collège de Montréal, subsequently receiving legal training by apprenticeship, and was called to the Bar in 1811. He served in the militia during the War of 1812, took part in the Battle of Châteauguay and was described in an official report as having shown most conspicuous bravery. At the time of the duel, he represented Huntingdon in the Legislative Assembly of Lower Canada; he held this seat from 1814 to 1824. Appointed King's Counsel in 1831, he was named solicitor-general of Lower Canada in 1833 and five years later became Chief Justice of the Court of Queen's Bench at Montreal. His brilliant legal career was cut short by his death on March 7, 1839. That same day the Editor of the *Montreal Gazette* paid this tribute to the Honourable Michael

O'Sullivan:²⁰ "Mr. O'Sullivan was only appointed to the office of Chief Justice in November last, on the retirement of Mr. Chief Justice Reid, and occupied the presiding seat on the Bench for but one term—that for February. But during that short period his demeanour was such as to have excited the unanimous and unqualified appreciation of the Bar—to have won their esteem—and to render his death a source of deep and very general grief."

William Caldwell (1782-1833), O'Sullivan's opponent in the duel, was born in Scotland. He obtained his medical education at the University of Edinburgh in the period 1800-03 and received the degree of Doctor of Medicine, by attestation, from Marischal College, Aberdeen, in 1817.²⁷ He was a surgeon in the 13th Regiment of Dragoons and a veteran of the Peninsular War. Retiring from the army after the War of 1812, he became a licentiate of the Medical Board of Lower Canada in 1817 and settled in Montreal. Later he was a member of the original medical staff of The Montreal General Hospital, a founder of the Montreal Medical Institution—the first medical school in Canada—and eventually a founding member of the Faculty of Medicine of McGill University. Caldwell is justly remembered for the important part he played in the establishment of these institutions. The McGill Medical Faculty produced its first graduate in May 1833, but Dr. Caldwell did not live to witness this milestone. During the winter of 1832-33 he contracted typhus fever, complicated by pulmonary gangrene, and died on January 25, 1833. That he was held in high regard by his contemporaries is indicated by this quotation from the notice of his death in the *Montreal Gazette*:²³ "During the fifteen years that Dr. Caldwell has resided in Montreal, he has stood in the foremost rank in his profession and, enjoying as he did so deservedly general confidence, his loss may well be regarded as a public one."

The controversy which preceded the duel between Caldwell and O'Sullivan had its origin in January 1819 when a petition, signed by a number of Montrealers, was presented to the Legislative Assembly of Lower Canada by Mr.

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John Molson.^{1, 11} The petition drew attention to the inadequacy of provisions in Montreal for the care of the sick. The Hôtel-Dieu de Montréal, established in the mid-seventeenth century with the founding of the city, had a magnificent record, but by 1819 its facilities were overwhelmed. It could accommodate only 30 patients, its nuns were seriously overworked and, two years before, it had been forced to close its doors to cases of fever. Facilities for the care of the sick had not kept pace with the rapid growth of population. The problem was aggravated by the rising tide of emigration from Europe. Many immigrants were sick, as well as destitute, and urgently required care in hospital. The petitioners accordingly requested financial aid from the provincial government to erect and endow a public hospital in Montreal.

This petition met with considerable opposition. Its most vocal opponent was Michael O'Sullivan, the Honourable Member for Huntingdon.^{1, 14} Mr. O'Sullivan maintained that the needs of Montrealers could be met by enlarging the Hôtel-Dieu and that the erection and endowment of another hospital would involve an extravagant waste of public funds. This was a reasonable point of view which, no doubt, deserved careful consideration. It was certainly shared by others. The Editor of the *Montreal Gazette* wrote: "Such an Institution as a public Hospital will, sometime or other, be wanted in this city, but the Hotel Dieu with such an enlargement as mentioned by Mr. O'S. will answer every purpose, it is thought, for some time to come."¹⁵ However, Mr. O'Sullivan did not confine himself to expounding a reasonable point of view. In a provocative and highly satirical speech to the Legislative Assembly, he attacked the motives of those who proposed the establishment of a public hospital in Montreal. He contrasted the nuns of the Hôtel-Dieu with the "mercenary hirelings" of a public hospital. It was assumed, perhaps incorrectly, that the mercenary hirelings included the members of the medical profession of Montreal. Noting that one of the aims of the proposed hospital was the perfection of medical science, he concluded that this implied the conduct of experiments on patients. He stated that "an Hospital and the perfection of medical science are alternately cause and effect, and must constantly reproduce each other in a very destructive ratio". Reflecting "not only on the fatal perfection of that formidable art, but on the great increase of faculty* at Montreal, he trembled for the fate of his fellow citizens".¹⁴ Here his logic may become difficult to

follow, but his mistrust of the medical profession is obvious.

Detailed reports of Mr. O'Sullivan's speech appeared in the newspapers and provoked editorial comments and letters from readers. Most of these comments and letters only added fuel to the controversy and lessened the prospects of an amicable and constructive solution. For example, the Editor of the *Canadian Courant* wrote in defence of the plan to establish a public hospital in Montreal, but devoted a part of his editorial to harsh and offensive criticism of the nuns of the Hôtel-Dieu.¹⁴ A few days later, the *Montreal Herald* published a long, rambling letter signed Q.E.D.¹⁶ This offered indirect but ineffective support to the proponents of a public hospital. Q.E.D. maintained that the published reports of Mr. O'Sullivan's speech were a "complete fabrication" and that a man of Mr. O'Sullivan's ability and intelligence could not possibly have said what he was reported to have said.

Then came the letter which led to the duel. It appeared in the *Canadian Courant* of April 10, 1819, and was signed "An active advocate for an Hospital".¹⁷ Its purpose was merely to refute the claim, made in Q.E.D.'s letter to the *Montreal Herald*, that Mr. O'Sullivan's speech had not been accurately reported. Throughout the greater part of the letter in the *Canadian Courant*, the tone was restrained and the wording was less offensive than much that had gone before. But as the writer approached the end of his communication, he lost his temper and threw restraint to the winds. Recalling Mr. O'Sullivan's satirical remarks about the fatal perfection of the healing art and the increased number of the faculty in Montreal, he concluded with this foolish and largely irrelevant statement: "Whatever the inhabitants may have to apprehend from the faculty, the fears of the latter may be allayed so far as regards any personal act of violence from the learned barrister; to judge by the application of a powerful stimuli applied not long ago, when no reaction followed." No reference was made to the nature of the stimulus or stimuli to which Mr. O'Sullivan had failed to react, but the implication was clear—Mr. O'Sullivan lacked personal courage.

To this stimulus Mr. O'Sullivan reacted promptly enough to satisfy anyone who had doubts about his courage. The events which quickly followed were described by a correspondent of the *Quebec Gazette* in a letter written from Montreal on Sunday, April 11, 1819, the day of the duel.¹⁸ Since this is the only available contemporary account, the published

*Mr. O'Sullivan was using the word "faculty" to refer to the medical profession, not to a part of a university.

extract of the letter is quoted in full: "In consequence of a communication which appeared in the *Montreal Courant*, of Saturday 10th instant, signed 'An active Advocate of an Hospital,' Mr. O'Sullivan sent to demand the author, (of Mr. Mower), who prematurely gave up the name of Dr. Caldwell; a duel was the result, and at 6 o'clock, Sunday morning, the parties with their seconds having met near the Windmills, five shots were fired by each Gentleman; two of them have dangerously wounded Mr. O'Sullivan; Dr. Caldwell has received a shot in the arm, which is much shattered." The Mr. Mower named in this letter was Nahum Mower, proprietor and publisher of the *Canadian Courant*²² (called by the correspondent the *Montreal Courant* because it was published in Montreal). A week later, the *Quebec Gazette* carried the following item from Montreal: "Unfortunate Duel—On Sunday morning of the 11th inst. a meeting took place, between Mr. O'S. and Dr. C. both of this city. The former gentleman was severely wounded in the side, and the latter in the right arm. We are happy to learn, both are in a fair way of recovering."¹⁹

In the early years of the nineteenth century, duels were still common and a spot by the old Windmill on Windmill Point was much favoured by Montrealers as a duelling-ground. It is therefore not surprising that Mr. O'Sullivan should have challenged Dr. Caldwell and met him there. The surprising aspect of the encounter is the relentless determination of the duellists. Duels of such length and ferocity were rare. At some duels, the challenged party declined to fire, or he would discharge his pistol into the air. At others, no more than one exchange of fire took place and even if neither duellist was wounded, the seconds might decide that the aggrieved party had received adequate satisfaction. At still others, the exchange was repeated only until one or other contestant was wounded, perhaps slightly, the seconds calling a halt as soon as blood was drawn.¹³ The duel between Mr. O'Sullivan and Dr. Caldwell was of a very different character. The explanation probably lay in the temperaments of the duellists. Mr. O'Sullivan has been described as enjoying strife and endowed with a fiery temperament.^{2, 6} That Dr. Caldwell had similar qualities is suggested by an incident some years later. In 1831 a violent dispute arose within the congregation of St. Gabriel Street Presbyterian Church in Montreal. Open conflict broke out and, on a Sunday morning, one faction gained entry to the church and barricaded the door. The other faction occupied the street and blockaded the building to prevent the supply of provisions to

those inside. Dr. Caldwell figured as a ringleader in this fray.^{28, 29}

There is no evidence that the duel influenced the fate of the petition for a public hospital in Montreal, except perhaps by increasing bitterness and further diminishing the chances of financial support from the provincial government. Nothing more was heard of the petition, and the citizens of Montreal fell back on their own resources.¹¹ Money was raised by public subscription and on May 1, 1819, a small hospital was opened in a rented house on Craig Street. It was called The Montreal General Hospital. Then a lot was purchased on Dorchester Street, a new building was erected,* and on this more permanent site The Montreal General Hospital admitted its first patients in May 1822. In his speech to the Legislative Assembly^{1, 14} Mr. O'Sullivan had complained that the plans submitted were for a medical school as well as for a hospital. He was right; this was exactly what Dr. Caldwell and his colleagues had in mind. In 1823 Dr. Caldwell and his fellow medical officers of The Montreal General Hospital founded a teaching body known as the Montreal Medical Institution.⁹ Six years later this became the Faculty of Medicine of McGill University. In the biographical sketch of Dr. Caldwell, reference has already been made to his association with these institutions. Mr. O'Sullivan's only contribution to them was opposition. However, in the field of law he served Lower Canada well. Both Mr. O'Sullivan and Dr. Caldwell deserve to be remembered with respect. Each had his faults, but each achieved eminence in his own sphere.

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*The foundation stone of this building was laid in 1821. This is commonly regarded as the official date of the founding of The Montreal General Hospital.

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MEDICO-LEGAL

Malpractice—Who Says It Is?

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WHO says it is malpractice? Doctors do. About scientific medical matters who else could? Only doctors know what is good and what is bad practice. Though the decision is made by a court—and properly so, that is what courts are for—the decision is made on the advice of doctors. Courts, about details, do not presume to say what should be or may not be done; they look to the medical profession to supply this information which the courts then interpret and apply in the light of long-established legal principles about responsibility of people to and for each other. Courts depend on doctors to form and give opinions about the adequacy and competence of work which is under question, depend on the doctors to avoid unnecessary and picayune carping, to avoid criticizing a man because his work, in retrospect, can be shown in unimportant details to have been less than perfect and, at the other extreme, to avoid condoning poor work.

Doctors faced with legal action should know the criteria against which their conduct will be measured. Just as people do not constantly talk about or consciously consider honesty in their dealings with others, yet they have an underlying awareness of it which guides their actions, so doctors need not constantly talk about or consciously consider the legal criteria by which, if there is a dispute, their work will be judged, yet they must act with an underlying awareness

of these criteria. Among the criteria that will be applied is the quality of service that would be given, the quality of work that would be done, for the same conditions by other doctors under similar circumstances. A doctor's work will be judged in the light of the claims he makes for himself or, said another way, what he allows people to believe about him, that he is a specialist or a general practitioner.

When a doctor is faced with a claim that his work was less than competent in terms of the work he held himself out as capable of doing, how is a decision reached that he was competent or incompetent? A court cannot, of its own knowledge, always decide if the scientific work done by a professional man was adequate. Without that knowledge, a court seeks information from trained persons able to form an opinion, and those persons, obviously, must be doctors. In other words, courts turn to doctors and say, in effect, here is the problem, inform us what would have been competent care and tell us if, in your opinion, this plaintiff received competent care.

In practice, the advice is elicited by courts from experts chosen by the two parties to the action, plaintiff and defendant.

Assume a threat of action against a doctor. Undoubtedly before a plaintiff's solicitor decides on a court action he will have elicited as much detailed information from his client as possible. Once convinced that a client's claim is justified, the solicitor begins to interview doctors to whom he supplies such information as he has and asks

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